IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: O R D E R ::

D.B. CIVIL WRIT PETITION NO.4229/1997

Vinod Kumar Agarwal
Vs.
High Court of Judicature for Rajasthan, Jaipur.

Date of Order :: 17th May, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE J.R. GOYAL

::

Shri S.P. Sharma, for the petitioner.
Shri V.S. Gurjar, for the respondent.

*****

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

The petitioner, a former member of the Rajasthan Higher Judicial Service (in short 'RHJS') has filed this writ petition seeking direction to grant him Senior Scale of the Rajasthan Judicial Service (in short 'RJS') from 13.8.1987 when officers junior to him were promoted. The petitioner has further prayed for

issuance of direction to grant him Selection Grade and promotion to the RHJS from the date persons junior to him were granted the scale and promotion with all consequential benefits. At the time of hearing, however, counsel confined the writ petition to the claim for grant Senior Scale of the RJS alone. On account of his promotion to the RHJS on 9.2.1995, the claim for Senior Scale of the RJS relates only to the period 13.8.1987 to 8.2.1995.

It may at this stage itself be mentioned that the petitioner was compulsorily retired under rule 244(2) of the Rajasthan Service Rules 1951 (old) now rule 53(1) of the Rajasthan Civil Services Pension Rules, 1986. He challenged his compulsory retirement in D.B. Civil Writ Petition no.5391/2000 which was dismissed on 18.12.2000. Special Leave Petition (Civil) no.10087/2001 filed against the order dated 18.12.2000 was also dismissed on 12.4.2002. However, while dismissing the special leave petition, the Supreme Court observed that since the writ petitions for quashing adverse entries for the years 1995, 1996 and 1997 were pending in the High court; in case the adverse entries are ultimately quashed, the petitioner may seek reconsideration of the

decision to compulsorily retire him. The order, dated 12.4.2002, may be quoted as under:

> "Heard Mr. Rao for the petitioner and the learned Solicitor General for the High Court of Rajasthan. Having examined the impugned judgment of the High Court, we are not inclined to interfere with the same invoking our jurisdiction under Article 136 of the Constitution of India; particularly when the petitioner has filed three writ petitions praying for quashing of the adverse entries relating to 1995, 1996 and 1997 and, in the event, the petitioner succeeds in those three writ petitions and all the adverse entries for those years are ultimately quashed, it would be open for the petitioner to ask for reconsideration of the decision already taken. The special leave petition accordingly stands dismissed."

D.B. Civil Writ Petitions no.1878/2000, 1879/2000 and 5156/2000 for quashing the adverse entries for the years 1995, 1996 and 1997 were dismissed by Division Bench on 11.2.2004. The special leave petition against said order was also dismissed. In the circumstances, the order of compulsory retirement has become final.

However, even though the petitioner stands compulsorily retired from service, as his claim in this writ petition relates to a past period from 13.8.1987 to 8.2.1995, the instant petition cannot be treated as infructuous. In case

the petition is allowed, it will inure some monetary benefit for the relevant period to the petitioner.

Case of the petitioner is that he joined the RJS on 14.2.1977. A departmental enquiry was initiated against him in the year 1983 with respect to an incident of 1979, but he was exonerated of the charge on or about 20.10.1992. During this period, adverse entries were recorded in his Annual Confidential Reports (ACRs) for the years 1989, 1990 and 1991 but notwithstanding those remarks, he was promoted as Additional Chief Judicial Magistrate (ACJM) on 26.5.1990. In the meantime on 19.5.1990 many officers junior to him, namely, S/Shri Radheymohan, O.P. Gupta and Suresh Chand Gupta were granted Senior Scale with effect from 13.8.1987. The petitioner made representation on 15.5.1990 but no decision was communicated to him. He was informed of the adverse remarks for the years 1989 and 1990 and, later, 1991. He filed D.B. Civil Writ Petition nos.6383/1992, 6384/1992 and 397/1994 for quashing said remarks. The writ petitions were allowed on 18.1.1995 and the remarks were quashed. Soon after on 9.2.1995 he was promoted to the RHJS. Prior to that, on 21.1.1995 he had made representation stating

therein that the denial of Senior Scale to him was on account of adverse remarks for the years 1989, 1990 and 1991; the remarks having been quashed, he became entitled to Senior Scale with effect from 13.8.1987 when officers junior to him were granted the scale. The petitioner has also stated about adverse remarks for the years 1980, 1982, 1984, 1986 and 1987 and claimed that adverse remarks for the years 1980, 1982 and 1984 were expunged vide letter dated 5.3.1990. The petitioner has also stated that he was denied Selection Scale on 19.12.1991 on account of wrong notings put up before the Full Court suggesting that he had been awarded the punishment of stoppage of one grade increment and Censure even though, by then, the punishment had been set-aside by the appellate authority. No argument was addressed in this regard at the time of hearing. As stated above, the writ petition was confined to claim for Senior Scale. The petitioner has alleged discrimination at the hands of the respondents in the mater of grant of Senior Scale of the RJS. He claims to have made representation to the Inspecting Judge and stated that when he was not communicated any decision thereon, he filed this writ petition.

From the reply of the respondents as well as the record made available for our perusal, it appears that besides adverse remarks for the years 1989, 1990 and 1991 which were expunged in writ petitions nos.6383/1992, 6384/1992 and 397/1994; he got adverse remarks in 1980, 1982, 1984, 1986 and 1987. The petitioner in fact has stated about those adverse remarks but claimed that the adverse remarks for the years 1980, 1982 and 1984 were expunged on his representation vide letter dated 5.3.1990.

The following remarks were recorded in the ACR of the petitioner for the year 1980 :

> “The behaviour is not like that of a Judicial Officer. He is tactless. The behaviour is irresponsible and this has resulted in the loss of prestige of office and judiciary in Aklera. He is quite rash which affect his impartiality in dealing with the Public & the Bar. He is quite rash in his dealing and shows temper in the Court often. Needs improvement in judgment writing. He often creates administrative complication in relation to his dealing with colleagues and staff. Needs improvement in his capacity to control the proceedings in Court with firmness and follow the procedure prescribed by law.”

The remark ”Needs improvement in judgment writing” was expunged on 13.9.1989 which was communicated to the petitioner by letter dated 5.3.1990 referred to above.

Similarly, the following remarks were recorded in the ACR for the year 1982 :

> “At times shows temper in the Court. Judgments-needs improvement. He should improve his image. Lacks administrative neck.”

The remark “Judgments-needs improvement” was expunged on 13.9.1989.

For the year 1984, the remark in the ACR was as under :

> “Integrity-doubtful. He is not fair and impartial in dealing with the Public and the Bar. He is not cool-minded. Very short tempered, whimsical and tries to terrorise the public and the bar members. No control re:capacity to handle files systematically. Judgments on the facts and law are not on the whole sound, well reasoned and expressed in good language. Harsh and vindictive to his subordinates. Relations with the Bar-strained. His reputation as a Judicial Officer is at its lowest end. Always a headache to his administrative head.”

The above remark to the extent “Integrity-doubtful. Integrity Certificate for the period 5.5.1984 to 21.12.1984 with-held” was expunged and the same was communicated to the petitioner by letter dated 5.3.1990.

The remarks for the years 1986 and 1987 were as under :

1986 –

> “He is bit cynical in attitude. Not a very cool minded Officer. Relations with the Bar-not very happy –needs improvement. His angularities of temperament hamper his efficiency.”

1987 –

> “Shows temper which he should control. Relations with the Bar- not very cordial.”

The representation for expunction of these remarks was rejected which was communicated by the same letter dated 5.3.1990.

The petitioner’s claim for Senior Scale has to be considered in the above background. There is no dispute at the bar that for grant of Senior Scale, records for the previous seven years were to be seen and the reckoning date being 13.8.1987, the question for consideration is whether the denial of Senior Scale on the basis of service records of the previous seven years was unjustified.

A bare glance at the record reflected by the ACRs - even after ignoring the expunged portions – presents a dismal picture of petitioner

as a Judicial Officer. The remarks are negative and reflect badly on his performance. No wonder the petitioner was compulsorily retired from service on assessment of his service records.

Counsel for the petitioner submitted that by reason of his promotion as ACJM and, subsequently, to the RHJS, adverse remarks must be deemed to have been washed out. The submission appears to be attractive at the first instance but cannot be accepted. We were informed at the bar that at the relevant time the officers used to be promoted as ACJM on the basis of seniority alone but the Senior Scale was granted on the basis of 'seniority –cum- merit'. The petitioner's 'promotion' as ACJM on 26.5.1990 therefore can be of no avail to him. That perhaps is the reason why Shri Radheymohan and others who were granted Senior Scale on 19.5.1990 (with effect from 13.8.1987) were not granted promotion as ACJM because they were junior. This shows that the so called promotion as ACJM was on the basis of seniority alone and merit was not taken into consideration. As regards his subsequent promotion to the RHJS, apparently, it was given on the basis of the service records for the relevant period. An officer may be denied promotion on the basis of

his service record for the relevant period, but promotion may be granted later to the same grade or higher grade/post on the basis of record for the relevant period as per the yard-sticks and norms. Therefore, if the petitioner was promoted to RHJS in the year 1995, on the basis of service record for the relevant seven years' period, it is apparent that the record for the period 1980-1987 must not have been taken into consideration and therefore, the petitioner cannot contend that the adverse remarks for the same period stood washed out by reason of his subsequent promotion to the RHJS.

From the record it appears that a three Member/Judge Committee had been constituted to consider representations filed by the officers for grant of Super-time/Selection/Senior Scales of the RJS, as the case may be. While some of the representations were allowed, others were rejected. The case of the petitioner was considered separately by the Committee and it may be useful to quote the minutes as under :

> "We have considered the A.C.Rs. of the Officer for the period 1981 to 1987. He has made representation for grant of Senior Scale of R.J.S.
>
> The A.C.R. of 1981 is not available. In 1982 he has been rated as an average officer. In the same year a golden ring

was found missing from the Malkhana. He lacks administrative tact and shows temper in the court. In the year 1983 he has been shown to be an average officer and a warning was issued to him. It is further remarked that his reputation as a Judicial Officer is at lowest. While on election duty he is reported to have misused the Government vehicle. It is also mentioned that he is a head-ache to the administrative head. 4 warnings were issued to him in the year 1984. A golden chain was also found missing from the Malkhana. In the years 1985 and 1986 he has been reported to be an average officer. There seems to be confusion whether there was loss of golden ring or chain. After ascertaining the facts from the record it seems that loss was of golden chain. We were also informed by the Registrar after perusing the record that the matter for issuing sanction for prosecution of this officer is pending consideration of the State Government. He has made representation regarding remarks of his bad temper made in the A.C.Rs. of 1986 and 1987 were rejected after due consideration.

We are of the opinion that his representation deserves to be rejected."

The above report of the Committee was approved by the Full Court on 21.10.1994.

The proceedings of another Committee rejecting the petitioner's claim for Selection Grade of RJS are also available in the record but as the claim in this regard was not pressed at the time of hearing it is not necessary to refer to them in this judgment.

In the above premises, we find no error in the impugned decision denying benefit of Senior Scale alongwith Shri Radheymohan and others on 19.5.1990 with effect from 13.8.1987. No case thus is made out for issuance of any mandamus to the respondents to grant him Senior Scale of the RJS with effect from 13.8.1987.

In the result, we find no merit in this petition which is accordingly dismissed.

[J.R. GOYAL], J. **[S.N. JHA], CJ.**

Skant/-